appeal from a temporary restraining order, *held,* order reversed since a purchaser for value and without notice is not bound. *Hancock* v. *Gumm* (Ga. 1921) 107 S. E. 872.

Most American courts, regarding restrictive agreements as analogous to negative easements, enforce them in equity. *Chapin* v. *Dougherty* (1911) 165 Ill. App. 426. Some jurisdictions, as that of the instant case, enforce them because they will not permit one to disregard a covenant of his grantor when one has notice on purchasing. *DeGray* v. *Monmouth Beach Club House Co.* (1892) 50 N. J. Eq. 329, 24 Atl. 388; *Tulk* v. *Moxhay* (1848) 2 Phil. 774. One who purchases for value without notice, however, takes the land free from the restriction. *Moller* v. *The Presbyterian Hospital* (1901) 65 App. Div. 134, 72 N. Y. Supp. 483. One who purchases with notice from one who purchased without notice and for value should take free from the restriction. *Cf. Bradford* v. *Davis* (Mo. 1920) 219 S. W. 617. A purchaser is charged with notice when the restriction is contained in any conveyance necessary to his title. *Peck* v. *Conway* (1876) 119 Mass. 546. If, however, the restriction is in an instrument outside the purchaser's chain of title, there is no constructive notice. *Glorieux* v. *Lighthipe* (1915) 88 N. J. L. 199, 96 Atl. 94. Thus, since the restriction was contined in a deed which was not a link in the defendant's chain of title, and, since neither the defendant nor his grantor were shown to have had actual notice, the instant case is sound.

TORTS—INJURY TO LICENSEE—PUBLIC WAY—LEGAL CAUSE.—While standing on a springboard affixed to defendant's property and extending beyond the property line over a public waterway, the plaintiff's intestate, a sixteen year old boy, was killed by the falling of the defendant's electric wires. The springboard had been used by swimmers for more than five years. In an action for damages, on appeal from the dismissal of the complaint, *held,* three judges dissenting, a new trial should be granted. *Hynes* v. *New York Central R. R. Co.* (1921) 231 N. Y. 229, 131 N. E. 898.

If the plaintiff's son was on the defendant's land he was, because of the habitual use without protest, a licensee. *Driscoll* v. *The Newark and Rosendale Cement Co.* (1868) 37 N. Y. 637. Generally, a licensee is not protected from negligent acts of nonfeasance. *Faris* v. *Hoberg* (1892) 134 Ind. 269, 33 N. E. 1028; *Downes* v. *Elmira Bridge Co.* (1899) 41 App. Div. 339, 58 N. Y. Supp. 628. But the defendant's contention that the boy being on the springboard was thereby on its land so as to forfeit the reasonable protection due to users of the highway seems unwarranted. The board extending over the public waterway was a nuisance. *Reimer's Appeal* (1882) 100 Pa. St. 182. The space above and below the board was public property which the bather as a member of the public was privileged to use. *Cf. Corbett* v. *Hill* (1870) 22 L. T. R. (N. S.) 263, 39 L. J. Ch. 547. While standing aloft he was at most guilty of touching with his feet a projecting fixture which was an encroachment on public territory. Such an obstructing nuisance should not be the means whereby the defendant may reduce the degree of care due even to such users of the public highway. It is further submitted that the majority opinion is sound in holding that the area covered by the falling wires was so great that there was no causal connection between the use of the springboard and the injury. *Cf. Laidlaw* v. *Sage* (1899) 158 N. Y. 73, esp. 79, 52 N. E. 679. The instant case, therefore, seems to be correctly decided.

TROVER AND CONVERSION—MONEY—MISAPPROPRIATION OF FUNDS RECEIVED.—The defendant sold the plaintiff's wagon loader after the revocation of his agency by the plaintiff and kept the proceeds. The action is for the conversion of the proceeds. *Held,* for the plaintiff. *George Haiss Mfg. Co., Inc.* v. *Becker* (3d Dept. 1921) 198 App. Div. 123, 189 N. Y. Supp. 791.

It is generally said that trover cannot be maintained with respect to money unless it can be specifically identified. But there is much conflict in cases where the defendant has misappropriated funds he has received for the plaintiff. Where the receipt of money creates the relationship of debtor and creditor the action will not lie. *Kerwin* v. *Balhatchett* (1909) 147 Ill. App. 561. Some courts allow the action only when the defendant is under a duty to return the specific money received. *Tribune Pub. Co.* v. *Davis* (1916) 114 Me. 371, 96 Atl. 385; *Larson* v. *Dawson* (1902) 24 R. I. 317, 53 Atl. 93. That the money cannot be later identified makes no difference. See *Gordon & Purse* v. *Hostetter* (1867) 37 N. Y. 99, 103. Where the defendant has wrongfully received money by converting the property of the plaintiff, some courts, *contra* to the instant case, will not allow an action for the conversion of the money. *Anderson Electric Car Co.* v. *Saving's Trust Co.* (1919) 201 Mo. App. 400, 212 S. W. 60. But some hold that where the defendant has obtained the property by fraud and changed it into money, the action will lie. *Meyer* v. *Doherty* (1907) 133 Wis. 398, 113 N. W. 671. Some jurisdictions have extended the action to a suit against a bank which wrongfully pays out the plaintiff's deposits. *State* v. *Omaha National Bank* (1899) 59 Neb. 483, 81 N. W. 319. In New York the courts allow the action against one who receives funds as a fiduciary. *Jackson* v. *Moore,* (1904) 94 App. Div. 504, 87 N. Y. Supp. 1101. The New York court is influenced by the fact that the N. Y. Civ. Prac. Act § 826(8) permits the civil arrest of the defendant in such cases, thereby showing the legislature's intent to class such an act as a tort. See *Britton* v. *Ferrin* (1902) 171 N. Y. 235, 243, 63 N. E. 954. The rule that a plaintiff must be entitled to the specific money in the defendant's hands is in accord with the established common law doctrine of trover, and should be followed in the absence of statute.

TROVER AND CONVERSION—PLAINTIFF HAVING ONLY SPECIAL INTEREST—MEASURE OF DAMAGES.—The defendant delivered goods of the value of $600 shipped by the plaintiff to the consignee, without collecting a draft of $54, attached to the bill of lading, which amount was due the plaintiff on the goods. The plaintiff sued for the conversion of the goods. *Held,* the plaintiff can recover only $54, its special interest. *Broyles Stove and Furniture Co.* v. *Hines, Director General* (1920) 204 Ala. 584, 87 So. 19.

Although one has only a special interest, it is generally said that, in an action of trover, he may recover the full value of the chattels. *Adams* v. *O'Connor* (1868) 100 Mass. 515. But this rule is limited in effect to cases where the plaintiff must hold the surplus over his interest for the general owner. See *Adams* v. *O'Connor, supra,* 518. Or where the plaintiff is accountable for the full value to the general owner. See *Pabst Brewing Co.* v. *Greenberg et al.* (C. C. A. 1902) 117 Fed. 135, 137; *California etc. Ass'n* v. *Ainsworth* (1901) 134 Cal. 461, 463, 66 Pac. 586. Thus, when the general owner is the convertor, and is still entitled to payment from the plaintiff, the courts allow a recovery only to the amount of the special interest, to avoid circuity of action. *White* v. *Allen* (1882) 133 Mass. 423; *California etc. Ass'n* v. *Ainsworth, supra; Davis* v. *Miller's Auction Rooms* (1913) 144 N. Y. Supp. 672 (*semble*). Some courts reach the same result, stating as a reason that to compensate the plaintiff for more than his interest would be inequitable. *Ludden* v. *Buffalo Batting Co.* (1886) 22 Ill. App. 415, 421; *M'Gowen* v. *Young* (Ala. 1832) 2 Stew. & P. 160, 171. When in fact the plaintiff would not have to account over for any surplus, as in the instant case, he is refused a recovery of more than his interest. *Chinery* v. *Viall* (1860) 11 L. T. R. (N. S.) 466. This is sound, for to allow him to recover and keep damages beyond those necessary for compensation would be inequitable, and *contra* to the established rules of damages.